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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 ZENAIDA CORDOVA,

12 Plaintiff,

13 v.

14 OFFICER GREG RODRIGUEZ, ACTING
15 WARDEN MICHAEL PALLARES, and
DOES 1 to 30,

16 Defendants.

Case No. 1:24-cv-00482-JLT-HBK (PC)

FINDINGS AND RECOMMENDATIONS TO
GRANT DEFENDANT'S MOTION TO
DISMISS BUT GRANT PLAINTIFF LEAVE
TO AMEND¹

FOURTEEN DAY DEADLINE

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18 Plaintiff Zenaida Cordova is a state prisoner proceeding through counsel on her Complaint
19 for Violation of Civil and Constitutional Rights under 42 U.S.C. § 1983. (Doc. No. 1,
20 “Complaint”). Defendant Michael Pallares filed a motion to dismiss pursuant to Federal Rule of
21 Civil Procedure 12(b)(6). (Doc. No. 16). Plaintiff filed an opposition (Doc. No. 33), and
22 Defendant filed a reply (Doc. No. 34). For the reasons set forth below, the undersigned
23 recommends the district court grant the motion to dismiss, but allow Plaintiff leave to amend her
24 Eighth Amendment claim against Pallares.

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28 ¹This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Eastern District of California Local Rule 302 (E.D. Cal. 2025).

1 **I. BACKGROUND**

2 **A. Case Initiation and the FAC**

3 On April 23, 2024, Plaintiff initiated this action by filing her Complaint against Officer
4 Greg Rodriguez, Acting Warden Miachael Pallares, and Does 1 to 30. (Doc. No. 1 at 1).
5 Defendant Pallares is sued in his individual capacity. (*Id.* at 3, ¶ 6). The Complaint alleges that
6 at all relevant times, Plaintiff was incarcerated at the Central California Women's Facility
7 ("CCWF"), where Defendant Pallares was the acting warden. (*Id.*). "[B]egining in August of
8 2021 and the final event occurring on April 24, 2022," various CCWF employees, including but
9 not limited to Defendant Rodriguez, "forced, coerced, intimidated and threatened [Plaintiff] that if
10 she did not perform sexual acts with those men that they would take punitive action against her
11 including placing her in solitary confinement or (Ad Seg), or other punitive and uncomfortable
12 punishments." (*Id.* at 5, ¶ 16). Specifically, "Rodriguez took [Plaintiff] into the Board of Parole
13 Hearing (BPH) office on those occasions referenced above and told her that he could help her
14 shorten her time at CCWF if she agreed to commit sexual acts with him." (*Id.*). Plaintiff "was
15 forced to perform fellatio on Officer Rodriguez," and Rodriguez took Plaintiff "into the BPH and
16 sodomized her and raped her repeatedly with the last occurrence being April 24, 2024." (*Id.*).
17 Plaintiff faults CDCR and Pallares for "not properly investigat[ing] prior claims of sexual
18 harassment, physical and sexual assaults committed against inmates by Defendants at CCWF."
19 (*Id.* at 7, ¶ 27). She further alleges that Pallares "made intentional decisions with respect to the
20 co-defendants that allowed them to have unmonitored access to areas not subject to video
21 surveillance or other monitoring." (*Id.* at 8, ¶ 29).

22 Based on these allegations, Plaintiff asserts four claims: (1) cruel and unusual
23 punishment/excessive force against Rodriguez and Pallares; (2) right to bodily integrity against
24 Rodriguez and Pallares; (3) failure to protect against Pallares; and (4) supervisory liability against
25 Pallares. (*Id.* at 6-10).

26 **B. Defendant's Motion**

27 On October 1, 2024, Pallares moved to dismiss the claims against him. (Doc. No. 16).
28 Defendant argues that Plaintiff's first claim for cruel and unusual punishment/excessive force

1 fails because “an Eighth Amendment claim for sexual assault requires that the plaintiff allege the
2 defendant touched the plaintiff in a sexual manner or otherwise personally engaged in sexual
3 misconduct for the defendant’s own gratification,” but the Complaint “contains no allegations that
4 Warden Pallares used any force or touched [Plaintiff] at all, much less in a sexual manner, or
5 otherwise engaged in any sexual misconduct with [Plaintiff].” (*Id.* at 4-5). Additionally,
6 Defendant argues he is entitled to qualified immunity on this claim because “it was not clearly
7 established that a warden could violate the Eighth Amendment’s prohibition against excessive
8 force and sexual assault based on an officer’s sexual assault when unaccompanied by any sexual
9 touching, sexual misconduct, or other personal participation in the sexual misconduct by the
10 warden.” (*Id.* at 6-7).

11 Next, Defendant argues Plaintiff’s Fourteenth Amendment right to bodily integrity claim
12 is not cognizable because the Eighth Amendment governs convicted inmates’ claims regarding
13 alleged sexual assault. (*Id.* at 7-8). Further, Defendant argues that “even if the Court is inclined
14 to recognize such a claim, it would fail as to Warden Pallares for the same reasons stated with
15 respect to the Eighth Amendment claim, as [Plaintiff] has alleged no sexual touching or other
16 sexual conduct by Warden Pallares.” (*Id.* at 8). As with the previous claim, Defendant argues he
17 is entitled to qualified immunity because “it is not clearly established that convicted inmates can
18 state a ‘bodily integrity’ claim under the Fourteenth Amendment.” (*Id.* at 8-9).

19 Turning to Plaintiff’s failure to protect claim, Defendant argues Plaintiff has not alleged
20 sufficient facts to state a claim because she makes only vague and conclusory allegations, but
21 “does not allege that she reported any misconduct by a Defendant, or any other prison staff
22 member.” (*Id.* at 10-11). As to the supervisory liability claim, Defendant argues such fails
23 because there is no *respondeat superior* liability under 42 U.S.C. § 1983 and the Complaint does
24 not allege “any facts plausibly suggesting that Warden Pallares was on notice that Defendant
25 Rodriguez or any other staff were sexually assaulting inmates.” (*Id.* at 11-12). Defendant argues
26 this failure to allege sufficient facts to support the claim also entitles him to qualified immunity.
27 (*Id.* at 12-13). Finally, Defendant argues dismissal with prejudice is proper because amendment
28 would be futile. (*Id.* at 13).

1 **C. Subsequent History and Plaintiff's Opposition**

2 On October 29, 2024, the previously assigned magistrate judge ordered Plaintiff to file a
3 response to Defendant's Motion within thirty days. (Doc. No. 21). Approximately two weeks
4 later, the magistrate judge ordered Plaintiff's counsel to inform the Court which Defendants still
5 remained in the case and inform the Court which Defendants, if any, Plaintiff wished to
6 voluntarily dismiss. (Doc. No. 22). The same day, the magistrate judge ordered Plaintiff to
7 inform the Court why proofs of service had not been filed or to file the appropriate proofs of
8 service within seven days. (Doc. No. 23). On January 2, 2025, after Plaintiff failed to respond to
9 the Court's orders, the Court entered an order once again instructing Plaintiff to indicate which
10 Defendants remain and which Defendants she wished to voluntarily dismiss, and to inform the
11 Court why proofs of service had not been filed. (Doc. No. 25). On January 6, 2025, Plaintiff
12 filed a response to the Court's order requesting that both Defendants Pallares and Rodriguez
13 remain in this action. (Doc. No. 26).

14 On July 3, 2025, this matter was reassigned to the undersigned magistrate judge. (Doc.
15 No. 28). Following review of the file, the undersigned ordered Plaintiff to file an amended
16 complaint or response to Defendant's Motion and to show cause why Defendant Rodriguez
17 should not be dismissed under Federal Rule of Civil Procedure 4(m). (Doc. Nos. 29, 30). On
18 August 14, 2025, Plaintiff filed a return of service, indicating Rodriguez was served on May 28,
19 2024. (Doc. No. 31).

20 Also on August 14, 2025, Plaintiff filed her opposition to Defendant's Motion. (Doc. No.
21 33). Plaintiff argues Pallares need not have been involved in the actual sexual assault but rather
22 can be held liable for Plaintiff's claim of cruel and unusual punishment based on his deliberate
23 indifference to Plaintiff's safety. (*Id.* at 4-7). In her opposition, Plaintiff argues that claims "had
24 been made against Officer Rodriguez for years prior to [her] claims" and Rodriguez's "methods
25 of taking the women into the Parole Board hearing room, where no cameras were installed, was
26 well known throughout the prison" such that Pallares's "failure to either make himself familiar
27 with these claims and blindly allow these atrocities to continue, or, worse, to ignore them
28 altogether, results in liability to him under the 8th Amendment." (*Id.* at 6-7). Plaintiff next

1 asserts that “Warden Pallares makes the surprising argument that since [Plaintiff] was a prison
2 inmate, and not simply a detainee, she lost her right to bodily integrity” and “[t]hat claim is just
3 wrong.” (*Id.* at 7-8). Plaintiff relies on *Vazquez v. County of Kern*, 949 F.3d 1153 (9th Cir.
4 2020), to support her argument that she can bring a Fourteenth Amendment bodily integrity
5 claim. (*Id.*).

6 As to Defendant’s argument that Plaintiff’s claims for failure to protect and supervisory
7 liability are redundant, Plaintiff argues “[r]edundancy is not a valid basis for dismissal, and
8 Plaintiff is not arguing for *respondeat superior* liability against Pallares,” but rather argues her
9 “failure to protect claim under the Eighth Amendment against Pallares is asserting liability for
10 Pallares’s culpable inaction and is properly plead.” (*Id.* at 8-9). Plaintiff asserts that she was
11 “sexually harassed, assaulted and raped by Defendant Rodriguez while at CCWF and *after* prior
12 complaints had been made to Pallares” but “Pallares took no action to stop the rapes of female
13 inmates.” (*Id.* at 10). Plaintiff argues Pallares is not entitled to qualified immunity because he
14 “knew that female inmates, including [Plaintiff], faced a substantial risk of harm and took no
15 action to protect the female inmates,” and the right of prisoners to be free from sexual assault is
16 clearly established. (*Id.* at 11-12). To the extent the Court grants Defendant’s Motion, Plaintiff
17 requests an opportunity to amend “to state facts more clearly for the Court.” (*Id.* at 12).

18 **D. Defendant’s Reply**

19 Defendant Pallares filed his reply on August 22, 2025. (Doc. No. 34). Defendant argues
20 Plaintiff’s “opposition appears to concede that [her] claim against Warden Pallares for ‘Cruel and
21 Unusual Punishment/Excessive Force’ fails.” (*Id.* at 2 (citing Doc. No. 33 at 4-7)) (record
22 citation omitted). To the extent Plaintiff’s argument can be read as asserting a failure to protect
23 claim, Defendant argues the allegations in the Complaint are insufficient to support such a claim.
24 (*Id.* at 2-3). As to the bodily integrity claim, Defendant argues that *Vazquez* does not support that
25 an inmate can bring such a claim under the Fourteenth Amendment. (*Id.* at 3-5). Defendant next
26 argues that Plaintiff’s “opposition appears to concede that the Third and Fourth claims for Relief
27 are an attempt to plead a single claim for ‘failure to protect,’” but the Complaint “is devoid of
28 facts indicating that Warden Pallares was on notice that Officer Rodriguez posed a substantial

1 risk of serious harm to [Plaintiff].” (*Id.* at 5). Finally, Defendant argues Plaintiff should be
 2 denied leave to amend because neither the Complaint nor the opposition “provides a factual basis
 3 that could state a claim against Warden Pallares.” (*Id.* at 6).

4 **II. STANDARD OF REVIEW**

5 A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure “tests the
 6 legal sufficiency of a claim.” *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir.
 7 2011). Dismissal for failure to state a claim is proper if there is a “lack of a cognizable legal
 8 theory or the absence of sufficient facts alleged under a cognizable legal theory.” *Id.*; *see also*
 9 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (to survive a motion to dismiss, the
 10 complaint must have sufficient facts to state a facially plausible claim to relief). In deciding a
 11 motion under Rule 12(b)(6), the court accepts as true all well-pled factual allegations in the
 12 complaint and determines whether the factual allegations are sufficient to state a right to relief
 13 above the speculative level. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *see also Nw. Env'tl. Def. Ctr.*
 14 *v. Brown*, 640 F.3d 1063, 1070 (9th Cir. 2011) (court accepts as true all material allegations in the
 15 complaint, as well as any reasonable inferences to be drawn from them).

16 “Where a motion to dismiss is granted, a district court must decide whether to
 17 grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and,
 18 thus, leave to amend should be freely granted.” *Winebarger v. Pennsylvania Higher Educ.*
 19 *Assistance Agency*, 411 F. Supp. 3d 1070, 1082 (C.D. Cal. 2019) (citation omitted). However,
 20 where leave to amend would be futile, because “the allegation of other facts consistent with the
 21 challenged pleading could not possibly cure the deficiency,” leave to amend may be denied.
 22 *DeSoto v. Yello Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

23 **III. ANALYSIS**

24 **A. Eighth Amendment**

25 Both Plaintiff’s first claim for cruel and unusual punishment/excessive force and her third
 26 claim for failure to protect arise under the Eighth Amendment, which “prohibits cruel and unusual
 27 punishment in penal institutions.” *Wood v. Beauclair*, 692 F.3d 1041, 1045 (9th Cir. 2012).
 28 “Sexual harassment or abuse of an inmate by a corrections officer is a violation of the Eighth

1 Amendment.” *Id.* at 1046. Additionally, under the Eighth Amendment, prison officials have an
2 affirmative obligation to protect prisoners from violence inflicted by others. *Farmer v. Brennan*,
3 511 U.S. 825, 833 (1994); *Labatad v. Corrs. Corp. of Am.*, 714 F.3d 1155, 1160 (9th Cir. 2013).
4 The failure of prison officials to protect inmates from attacks “may rise to the level of an Eighth
5 Amendment violation if prison officials know of and disregard a substantial risk of serious harm
6 to the plaintiff.” *Thomas v. Hernandez*, No. 2:21-cv-01638-TLN-DMC-P, 2022 WL 1173339, at
7 *4 (E.D. Cal. Apr. 20, 2022) (citing *Farmer*, 511 U.S. at 847, *Hearns v. Terhune*, 413 F.3d 1036,
8 1040 (9th Cir. 2005)). Accordingly, to state a failure to protect claim, the prisoner must establish
9 that the prison official was deliberately indifferent to a serious threat to the plaintiff’s safety.
10 *Farmer*, 511 U.S. at 834. Deliberate indifference includes both subjective and objective
11 components: “[a] prison official must be aware of facts from which the inference could be drawn
12 that a substantial risk of serious harm exists, and must also draw the inference.” *Labatad*, 714
13 F.3d at 1160 (quoting *Farmer*, 511 U.S. at 837). “Liability may follow only if a prison official
14 ‘knows that inmates face a substantial risk of serious harm and disregards that risk by failing to
15 take reasonable measures to abate it.’” *Id.* (quoting *Farmer*, 511 U.S. at 847).

16 Here, the Complaint does not contain any allegations that Pallares was directly involved in
17 sexually assaulting Plaintiff nor does Plaintiff argue in her opposition that Pallares was directly
18 involved in assaulting her. (See Doc. Nos. 1, 33). While Plaintiff argues that “[i]n other cases,
19 some of which have been related to this, Warden Pallares was an actual participant in the sexual
20 assaults” (Doc. No. 33 at 2), this case is separate from the related cases and must include
21 sufficient facts to support Plaintiff’s individual claims within the Complaint. Plaintiff’s total
22 failure to allege facts indicating that Pallares was involved in her alleged assaults is fatal to her
23 cruel and unusual punishment claim against him.

24 The Complaint is similarly devoid of facts to establish that Pallares acted with deliberate
25 indifference to Plaintiff’s safety. Plaintiff makes conclusory allegations that Pallares “did not
26 properly investigate prior claims of sexual harassment, physical and sexual assaults committed
27 against inmates by Defendants at CCWF.” (Doc. No. 1 at 7). However, the Complaint fails to
28 provide any specific facts as to when, how, or to whom previous claims of sexual assault were

1 made. Despite asserting in her opposition that “claims against Officer Rodriguez had been made
2 against Officer Rodriguez for years prior to [Plaintiff’s] claims” and Rodriguez’s “methods” were
3 “well known throughout the prison,” Plaintiff does not allege any fact to support these assertions
4 in the Complaint. (Doc. No. 33 at 6-7; *see generally* Doc. No. 1). *See, e.g., Wood*, 692 F.3d at
5 1051 (prison officials not liable for sexual assault by guard where prisoner never disclosed
6 guard’s actions to prison officials until after the incidents occurred); *see also Khan v. Pantoja*, No.
7 24-CV-03904 BLF (PR), 2024 WL 4951262, at *3 (N.D. Cal. Dec. 2, 2024) (finding fact that
8 correctional officer had several complaints of sexual misbehavior against him is not sufficient to
9 alert prison official that there existed a serious risk of harm to particular plaintiff).

10 Further, the assertions in the opposition still fail to identify specific reports of misconduct,
11 including an approximate time period as to when the reports were made, who received the reports,
12 and the alleged conduct that was the subject of the report in a way that would allow the Court to
13 infer that Pallares had knowledge of the risk of harm to Plaintiff. (Doc. No. 33 at 6-7). Without
14 more, Plaintiff’s conclusory allegations fall short of establishing that Pallares not only knew of a
15 substantial risk of serious harm to Plaintiff but also failed to take measures to abate that risk. *See*
16 *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012) (plaintiff’s conclusory allegations were
17 insufficient when they did not include “a specific event or events instigated by the Defendants
18 that led to” the constitutional violation). Thus, Plaintiff has also failed to state an Eighth
19 Amendment failure to protect claim against Pallares.

20 **B. Fourteenth Amendment**

21 Plaintiff’s second claim alleges Defendants violated her Fourteenth Amendment right to
22 bodily integrity when they sexually assaulted her. (Doc. No. 1 at 7). However, as Pallares
23 argues, Plaintiff’s status as an inmate means that her claim necessarily arises under the Eighth
24 rather than Fourteenth Amendment. As discussed above, the Ninth Circuit has concluded that
25 “[s]exual harassment or abuse of an inmate by a corrections officer is a violation of the Eighth
26 Amendment.” *Wood*, 692 F.3d at 1046. “[I]f a constitutional claim is covered by a specific
27 constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed
28 under the standard appropriate to that specific provision, not under the rubric of substantive due

1 process.” *United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997) (citing *Graham v. Connor*, 490
 2 U.S. 386, 394 (1989)). Accordingly, Plaintiff’s right to bodily integrity claim is more properly
 3 analyzed as a claim under the Eighth Amendment and fails for the reasons discussed above—the
 4 failure to allege any facts indicating Pallares was involved in her assault. *See Perkins v.*
 5 *Woodford*, 453 F. App’x 711 (9th Cir. 2011) (noting that the district court properly construed
 6 state prisoner’s Fourteenth Amendment due process claim based on deliberate indifference to his
 7 medical needs as an Eighth Amendment claim) (citing *Graham*, 490 U.S. at 395).

8 While Plaintiff relies on *Vazquez* to support that she can pursue a Fourteenth Amendment
 9 bodily integrity claim separate from her Eighth Amendment claim, such argument is unavailing.
 10 In *Vazquez*, the Ninth Circuit observed that “most cases that involve unwanted sexual contact or
 11 harassment by public officials have been analyzed under the substantive due process right to be
 12 free from violations of bodily integrity under the Fourteenth Amendment.” 949 F.3d at 1162.
 13 However, in a footnote, the Ninth Circuit explained that “[c]ases involving unwanted sexual
 14 contact or harassment by public officials during an arrest or custodial situation are evaluated
 15 under the Fourth Amendment.” *Id.* at 1162 n.6. Thus, consistent with *Lanier*, the Ninth Circuit
 16 recognized that when a claim arose under a specific constitutional amendment, it must be
 17 analyzed under that amendment rather than under the more general umbrella of substantive due
 18 process. Consideration of Plaintiff’s bodily integrity claim as a claim for cruel and unusual
 19 punishment under the Eighth Amendment, rather than as a substantive due process claim under
 20 the Fourteenth Amendment, is thus appropriate and consistent with *Vazquez*.

21 C. Supervisory Liability

22 Finally, Plaintiff asserts a supervisory liability claim against Pallares. (Doc. No. 1 at 9-
 23 10). Under § 1983, “[g]overnment officials may not be held liable for unconstitutional conduct of
 24 their subordinates under a theory of respondeat superior.” *Iqbal*, 556 U.S. at 676. Thus, to show
 25 that a supervisor is liable for a constitutional violation, a plaintiff may not rely on the alleged
 26 misconduct of the supervisor’s subordinates; rather, he “must plead that each Government-official
 27 defendant, through the individual’s own actions, has violated the Constitution.” *Id.*

28 “A supervisory official is liable under § 1983 [if] there exists either (1) his or her personal

1 involvement in the constitutional deprivation, or (2) a sufficient causal connection between the
2 supervisor's wrongful conduct and the constitutional violation." *Rodriguez v. Cnty. of Los*
3 *Angeles*, 891 F.3d 776, 798 (9th Cir. 2018) (citation modified). "The requisite causal connection
4 can be established ... by setting in motion a series of acts by others... or by knowingly refus[ing]
5 to terminate a series of acts by others, which [the supervisor] knew or reasonably should have
6 known would cause others to inflict a constitutional injury." *Starr v. Baca*, 652 F.3d 1202, 1207-
7 08 (9th Cir. 2011) (citation modified). "Thus, a supervisor may be liable in his individual
8 capacity for his own culpable action or inaction in the training, supervision, or control of his
9 subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a
10 reckless or callous indifference to the rights of others." *Rodriguez*, 891 F.3d at 798 (citation
11 modified); *see also Corales v. Bennet*, 567 F.3d 554, 570 (9th Cir. 2009) ("Supervisory liability is
12 imposed against a supervisory official in his individual capacity for his own culpable action or
13 inaction in the training, supervision, or control of his subordinates, for his acquiescence in the
14 constitutional deprivations of which the complaint is made, or for conduct that showed a reckless
15 or callous indifference to the rights of others.").

16 Based on the foregoing, a § 1983 claim against a supervisor can proceed so long as the
17 supervisor took or failed to take actions that were casually connected to the alleged harm.
18 Additionally, because this is the pleading stage, Plaintiff need only plead supervisory liability, not
19 prove it.

20 Here, Plaintiff alleges that Pallares "recklessly and with conscious disregard to known and
21 obvious risks to [Plaintiff's] safety, failed to protect Plaintiff and other inmates from pervasive
22 physical and sexual assaults" and his conduct "amounts to deliberate indifference to the rights of
23 [Plaintiff]." (Doc. No. 1 at 9). As Defendant argues, this claim is duplicative of Plaintiff's failure
24 to protect claim and is thus subject to dismissal for the same reasons discussed above.

25 **D. Qualified Immunity**

26 Pallares argues he is entitled to qualified immunity on Plaintiff's claims. (Doc. No. 16-1
27 at 6-7, 8-9, 12-13). Having found Plaintiff fails to state a claim against Pallares, the undersigned
28 declines to address qualified immunity at this time.

1 **E. Leave to Amend**

2 “Although leave to amend should be given freely, a district court may dismiss without
3 leave where a plaintiff’s proposed amendments would fail to cure the pleading deficiencies and
4 amendment would be futile.” *Cervantez v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041
5 (9th Cir. 2011).

6 Here, it is not clear that amendment would not cure the pleading deficiencies in Plaintiff’s
7 Eighth Amendment claims against Pallares. Significantly, in her opposition but not in her
8 Complaint, Plaintiff alleges that Pallares “was an actual participant in the sexual assaults” of
9 inmates other than Plaintiff. (Doc. 33 at 2). Additionally, Plaintiff seems to argue that the sexual
10 assaults against inmates were so pervasive that it would have been impossible for Pallares not to
11 know they were occurring. (*Id.* at 6-7). Finally, Plaintiff alleges that she was assaulted “*after*
12 prior complaints had been made to Pallares” and “Pallares took no action to stop the rapes of
13 female inmates by Rodriguez.” (*Id.* at 10). To the extent Plaintiff can assert specific facts to
14 support these allegations in a sworn amended complaint, such would likely be sufficient to state
15 an Eighth Amendment claim against Pallares. Additionally, discovery may subsequently reveal
16 facts that Pallares had notice of the alleged sexual assaults. Thus, the undersigned finds that any
17 dismissal should be without prejudice.

18 However, leave to amend Plaintiff’s Fourteenth Amendment bodily integrity claim is not
19 warranted because amendment would be futile. As discussed above, Plaintiff’s claim is properly
20 considered under the Eighth rather than Fourteenth Amendment.

21 Accordingly, it is **ORDERED**:

22 The July 31, 2025 Order to Show Cause (Doc. No. 30) is discharged.

23 Additionally, it is **RECOMMENDED**:

24 1. Defendant’s Motion to Dismiss (Doc. No. 16) be **GRANTED**.

25 2. Plaintiff’s Complaint (Doc. No. 1) be **DISMISSED without prejudice as to**

26 **Defendant Pallares** with Plaintiff granted leave to file an amended complaint within
27 twenty-one days of the district court’s adoption of these Findings and
28 Recommendations or after discovery if further facts are developed.

NOTICE TO PARTIES

2 These Findings and Recommendations will be submitted to the United States District
3 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
4 after being served with a copy of these Findings and Recommendations, a party may file written
5 objections with the Court. *Id.*; Local Rule 304(b). The document should be captioned,
6 “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed **fifteen**
7 **(15) pages**. The Court will not consider exhibits attached to the Objections. To the extent a party
8 wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its
9 CM/ECF document and page number, when possible, or otherwise reference the exhibit with
10 specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by
11 the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. §
12 636(b)(1)(C). A party’s failure to file any objections within the specified time may result in the
13 waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

Dated: September 27, 2025

Helena M. Barch - Kuchta
HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE